

## **REMARKS**

### **Claim Rejections – 35 U.S.C. §102 and §103**

Claims 67, 75 and 97 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,258,125 to Paul et al., and claims 63-65, 69-74, 76-89, 91, 92, 94-96 and 98-104 were rejected under 35 U.S.C. §103(a) as being unpatentable over Paul et al. in view of U.S. Patent No. 4,904,261 to Dove et al.

Each of the claim rejections set forth in the outstanding Office Action are based on U.S. Patent No. 6,258,125 to Paul et al. However, the Applicant notes that the '125 patent has already been removed as prior art via the submission of a Declaration of Prior Invention filed with the U.S. Patent and Trademark Office on October 24, 2006. A courtesy copy of the previously-filed Declaration is enclosed herewith. Additionally, each of the previous claim rejections based on the '125 patent were withdrawn with the following indication: "Applicants arguments, see Remarks and Affidavits, filed 10/30/06, with respect to the rejection(s) of claim(s) 63-106 have been fully considered and are persuasive." (See Non-final Office Action dated 01/22/2007; page 4, lines 14-16).

As set forth in the Applicant's Response filed on October 24, 2006, the '125 patent application was filed on July 30, 1999, and claims the benefit of U.S. Provisional Patent Application Serial No. 60/095,209 filed August 3, 1998. Accordingly, the '125 patent has a purported effective filing date of August 3, 1998. The Applicant reserves the right to challenge the purported effective filing date of the '125 patent.

The Declaration has been signed by each of the joint inventors and indicates that on a date prior to August 3, 1998, the Invention was conceived of and reduced to practice in the United States. To evidence conception and reduction to practice of the Invention, the Declaration is accompanied by an Invention Disclosure including drawings and a description of the Invention which correspond to the subject matter disclosed and claimed in the subject patent application. The dates listed on the Invention Disclosure have been blacked out, as well as dimensional data associated with the Invention. However, the joint inventors have declared that the "Date of Conception" and the "Date Constructed" occurred prior to August 3, 1998.

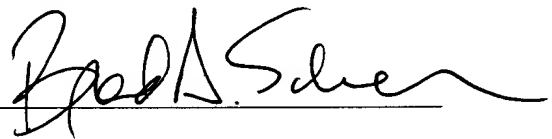
The Declaration also indicates that on a date prior to August 3, 1998 and shortly after the Invention was reduced to practice, the Invention was tested in the United States. The joint inventors have declared that the "Date First Tested" listed on the Invention Disclosure occurred prior to August 3, 1998. Following construction and testing of the Invention, the Invention Disclosure was forwarded to the law firm of Woodard, Emhardt, Naughton, Moriarity & McNett for preparation of a patent application. A patent application disclosing and claiming the Invention was filed with the U.S. Patent and Trademark Office on October 28, 1998. (U.S. Patent Application Serial No. 09/181,353; issued as U.S. Patent No. 6,174,311). The subject patent application claims priority to the parent patent application filed on October 28, 1998.

The Applicant submits that the previously-filed Declaration is effective to remove the '125 patent as prior art to the subject application. Since each of the claim rejections set forth in the non-final Office Action are based, at least in part, on the '125 patent, the Applicant respectfully requests withdrawal of the rejection of pending claims 63-65, 67, 69-89, 91, 92 and 94-104. However, the Applicant reserves the right to refute the claim rejections set forth in the Office Action should the Declaration for any reason be deemed ineffective to remove the '125 patent as prior art.

### CONCLUSION

The Applicant respectfully requests entry of this Amendment and consideration and allowance of the subject application including pending claims 63-65, 67, 69-89, 91, 92 and 94-104. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 

Brad A. Schepers  
Reg. No. 45,431  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 238-6334 (voice)  
(317) 238-6371 (facsimile)